

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

Vol. 25

SEPTEMBER 11, 1991

No. 37

This issue contains:

U.S. Customs Service

T.D. 91-73 and 91-74

General Notice

U.S. Court of International Trade

Slip Op. 91-71 Through 91-73

Abstracted Decisions:

Classification: C91/235

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The decisions, rulings, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Logistics Management, Printing and Distribution Branch, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

U.S. Customs Service

Treasury Decisions

19 CFR Parts 141 and 145

[T.D. 91-73]

AUTOMATED MAIL ENTRY FORM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: Customs is automating its processing of mail entries. The Automated Mail Entry Writing System will consist of a PC-based network located in the Customs mail branches. In order for the automated system to work, a new Customs form, which is for use by Customs officers, has been created. The new form and the new automated system will enable Customs to more easily track mail entries and the collections that are received from those entries. This document amends the Customs Regulations to include references to the new form, where appropriate, as well as making two other technical corrections. The amendments are procedural and non-substantive.

EFFECTIVE DATE: August 28, 1991.

FOR FURTHER INFORMATION CONTACT: Nat Aycox, Office of Inspection and Control, 202-566-8151.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Generally, for each article of mail imported into the U.S. to be delivered by the U.S. Postal Service which contains merchandise not exceeding \$1,250 in value and which is subject to duty or tax, Customs officers presently prepare and attach a mail entry form (Customs Form 3419). Customs Form (CF) 3419 is commercially printed and pre-numbered and serves as the informal entry for the mail article. Customs officers use the form to calculate the amount of duty on the article of mail, attach the form to the package, then return the article of mail to the Postal Service for delivery and collection of the duty. The Postal Service turns over the duty to Customs.

Customs has now developed the Automated Mail Entry Writing System which will streamline the tracking of imported mail and the collection of duty on mail entries. This system consists of a network of

personal computers (PCs) that will be located in the Customs mail branches. Customs officers will input information into the PCs regarding the tariff classification of the mail article and the PCs will calculate duty and print out pertinent information on a new automated mail entry form — the CF 3419A. The form will be bar-coded and will allow automated transmittal of collections from the U.S. Postal Service to a Customs account. The new form, CF 3419A, and the Automated Mail Entry Writing System will enable Customs to more easily track mail entries and the collections that are received from those entries.

This document amends the Customs Regulations to reference the new Customs form, CF 3419A where there is reference to the non-automated mail entry form, CF 3419. Such references can be found in Parts 141 and 145, Customs Regulations (19 CFR Parts 141 and 145). As the new automated system will be implemented in stages as funding allows, CF 3419, will still be in use in certain mail branches. Accordingly, this document does not eliminate the reference to CF 3419. At such time as all mail branches become operational in the Automated Mail Entry Writing System, the Customs Regulations will be amended to eliminate references to CF 3419.

TECHNICAL CORRECTIONS

This document also corrects two errors that appear in the Customs Regulations concerning mail entries. Section 141.68(f) is amended to correct the number of a Customs form that is cited. The paragraph cites Customs Form 5110-A; the correct cite is Customs Form 5119-A. Section 145.4(c) was inadvertently not amended when the value of merchandise for which an informal entry may be filed was raised from \$1,000 to \$1,250; this document remedies this.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

This amendment is a matter of agency management and organization. It does not affect the importing public. Accordingly, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are not necessary, and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

REGULATORY FLEXIBILITY ACT

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12291

The document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

DRAFTING INFORMATION

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR 141 AND 145

Customs duties and inspections; Entry; Mail importations.

AMENDMENTS TO THE REGULATIONS

Parts 141 and 145, Customs Regulations (19 CFR Parts 141 and 145) are amended as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The general and relevant specific authority citation for Part 141, Customs Regulations (19 CFR Part 141) continue to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624. * * *

§ 141.68 also issued under 19 U.S.C. 1315.

2. Section 141.68(f) is revised to read as follows:

§ 141.68 Time of entry.

* * * * *

(f) *Informal mail entry.* The time of entry of merchandise under an informal mail entry, Customs Form 3419, 3419A or 5119-A, is the time the preparation of the entry documentation by a Customs employee is completed.

* * * * *

PART 145—MAIL IMPORTATIONS

1. The general and relevant specific authority for Part 145, Customs Regulations (19 CFR Part 145) continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

§ 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618; * * *

§ 145.12 also issued under 19 U.S.C. 1315, 1484, 1498; * * *

2. Section 145.4(c) is amended in the following manner:

(a) By adding in the first sentence the punctuation and form number “,3419A” between “Customs Form 3419” and “or 5119-A”; and

(b) By removing the amount “\$1,000” in the first sentence and adding in its place “\$1,250”.

3. Section 145.12(b)(1), (e)(1), and (e)(2) is amended by adding the words “or 3419A” immediately after “Customs Form 3419”.

CAROL HALLETT,

Commissioner of Customs.

Approved: July 19, 1991.

PETER K. NUNEZ,

Assistant Secretary of the Treasury.

[Published in the Federal Register, August 28, 1991 (56 FR 42526)]

(T.D. 91-74)

SUPERVISION OF ALCOHOLIC BEVERAGE AND DISTILLED SPIRITS PLANT BONDED WAREHOUSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of resumption of supervision.

SUMMARY: Notice is hereby given that the Customs Service (Customs) has resumed responsibility from the Bureau of Alcohol, Tobacco and Firearms (BATF) for the conduct of spot-checks and regulatory audits at alcoholic beverage and distilled spirits plant bonded warehouses. The warehouses affected are those co-located at distilled spirits plant premises and those warehouses which store alcoholic beverages only. Customs resumption of supervision maintains the Treasury Department's control of bonded warehouses at these locations, and does not require any changes in the regulations of either agency or have any significant impact on the bonded warehouse industry. T.D. 86-193 which originally gave notice of the previous transfer of supervision to BATF, setting forth a Memorandum of Understanding between the two agencies in this regard, is thus superseded.

EFFECTIVE DATE: August 28, 1991.

FOR FURTHER INFORMATION CONTACT:

Customs:

Mike Brengle or Pat Duffy, Office of Cargo Enforcement and Facilitation, (202-566-8151).

BATF:

Ginger Smith, Tax Compliance Branch, (202-566-7602).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In a document published in the Federal Register as T.D. 86-193 (51 FR 37362), on October 21, 1986, notice was given that the BATF would perform, on behalf of Customs, spot-checks and audits of certain Customs bonded warehouses in accordance with a Memorandum of Understanding between the two agencies, which was also set forth therein. The warehouses specifically affected were those co-located at distilled spirits plant premises and those warehouses which stored alcoholic beverages only.

The transfer of the spot-check and audit functions to BATF under the 1986 Memorandum of Understanding was effected pursuant to the authority conferred in 31 U.S.C. 1535. This section authorizes the head of one agency to contract for the services of another agency under certain conditions. As specified in the agreement, BATF was to be reimbursed by Customs upon the collection from the warehouse proprietors of the annual fee determined under the provisions of 19 U.S.C. 1555, which were in effect at that time. However, the subsequent suspension

(under the Omnibus Budget Reconciliation Act of 1987) of Customs authority to collect the annual fee effectively terminated the agreement for reimbursement.

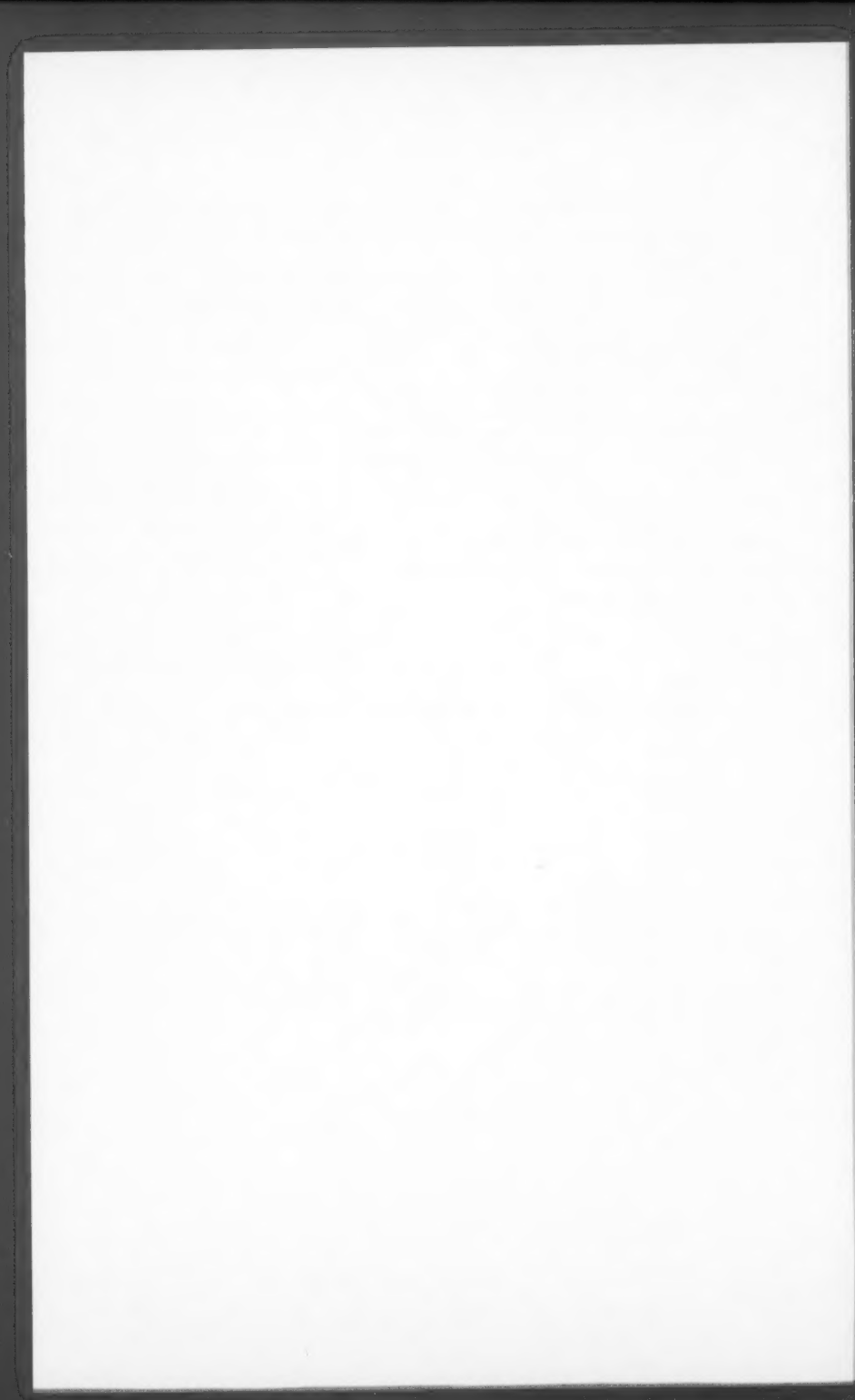
Although BATF continued to perform the spot-check and audit functions, it did so in anticipation that these functions would ultimately be transferred to BATF pursuant to formal rulemaking. Since a decision has been made not to proceed with the formal transfer of functions (see 56 FR 17775), BATF is no longer able to perform spot-checks and audits on behalf of Customs at alcohol-only warehouses.

The resultant resumption of responsibility by Customs for the supervision of alcohol-only warehouses continues the Treasury Department's control of bonded warehouses at these locations, and does not require any changes in the regulations of either agency or have any significant impact on the bonded warehouses industry. T.D. 86-193 which originally gave notice of the previous transfer of supervision from Customs to BATF, containing a Memorandum of Understanding to this effect between the two agencies, is thus superseded.

Dated: August 22, 1991.

SAMUEL H. BANKS,
Assistant Commissioner,
Office of Commercial Operations.

[Published in the Federal Register, August 28, 1991 (56 FR 42648)]



U.S. Customs Service

General Notice

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 3)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with Customs during the month of July follow. Please note that this notice is referred to above as No. 3. The first notice was published on July 17, and the second notice was published on August 21, 1991. Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, Room 2104, 1301 Constitution Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John F. Atwood, Chief, Intellectual Property Rights Branch, (202) 566-6956.

Dated: August 27, 1991.

JOHN F. ATWOOD,
Chief,

Intellectual Property Rights Branch.

The lists of recordations follow:

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U.S. CUSTOM
IPR RECORDATIONS

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91 00181	19910705	20110705	TIGER TANK
91 00182	19910705	20110705	IBM CURRENT VERSION 1
91 00183	19910705	20110705	IBM CURRENT VERSION 1
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91 00188	19910706	20110706	CASIO BOSS PC-LINK VER
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91 00191	19910706	20110706	GEROLSTEINER SPRUDEL M
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91 00193	19910709	20110709	CERAMIC CAT - 24128
91 00194	19910709	20110709	CERAMIC ANGELS - 24093
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91 00214	19910713	20110713	IBM PERSONAL SYSTEM/2
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	RAINBOW MERCHANDISE, INC.	N
.00 APPLICATION	INTERNATIONAL BUSINESS MACHINE	N
.00 QUICK START	INTERNATIONAL BUSINESS MACHINE	N
.00 INSTALLATION	INTERNATIONAL BUSINESS MACHINE	N
.00 USER GUIDE	INTERNATIONAL BUSINESS MACHINE	N
.00	INTERNATIONAL BUSINESS MACHINE	N
ORGANIZER LINK	TRAVELING SOFTWARE INC.	N
RSION 1.0	TRAVELING SOFTWARE INC.	N
RSION 2.0	TRAVELING SOFTWARE INC.	N
NATURALLY SPARKING	WORLD CUP U.S.A. 1994, INC.	N
	KENNETH H. GAUNTLETT	N
	BAZAARS, INC.	N
	BAZAARS, INC.	N
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	BAZAARS, INC.	N
	LAUREL BURCH, INC.	N
E SCARF	INTERNATIONAL BUSINESS MACHINES	N
MODEL 90 XP 486	INTERNATIONAL BUSINESS MACHINES	N
MODEL 90 XP 486	INTERNATIONAL BUSINESS MACHINES	N
MODEL 55LS POWER	INTERNATIONAL BUSINESS MACHINES	N
MODEL 95 XP 486	INTERNATIONAL BUSINESS MACHINES	N
	DIGITAL RESEARCH INC.	N
	TOMY KOGYO CO., INC.	N
	TOMY KOGYO CO., INC.	N
	RITA ABRAHAM	N
	ISLAND RECORDS, LTD.	N
	ISLAND RECORDS, LTD.	N
	LTH YIH INDUSTRIAL CO., LTD.	N
	MATRIX ESSENTIALS, INC.	N

CUSTOMS BULLETIN AND DECISIONS, VOL. 26, No. 37, SEPTEMBER 11, 1991

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91 00318	19910705	20010115	COTTON AT THE TOP
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91 00329	19910706	19981010	ACR
91 00330	19910706	20031115	DR SCHOLL'S AND DESIGN
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91 00337	19910709	20010227	PLAYTEX
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91 00339	19910709	20040911	CARE BEARS
91 00340	19910709	19930130	NOKOMIS
91 00341	19910709	20010129	MICROEDGE (STYLIZED)
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91 00343	19910709	20010101	CLAIBORNE
91 00344	19910710	20000306	LC SPORT CREST
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91 00362	19910711	20080802	CARTON DESIGN

MS SERVICE
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PAGE 2
DETAIL

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	MATRIX ESSENTIALS, INC.	N
	MATRIX ESSENTIALS, INC.	N
OF A RABBIT	BDJ, INC.	Y
	ESMARK APPAREL, INC.	N
	M.I.M.T. INC.	Y
	E. & J. GALLO MINERY	N
	SANH CHUNG D/B/A VIET HUONG CO.	Y
	SANH CHUNG D/B/A VIET HUONG CO.	Y
	SCOTCH GAME CALL COMPANY INC.	N
	SCHNINN BICYCLE COMPANY	Y
	SCHNINN BICYCLE COMPANY	Y
& DESIGN	ALLOY RODS GLOBAL, INC.	N
	ALLOY RODS GLOBAL, INC.	N
	PHILLIPS SCREN COMPANY	Y
	PHILLIPS SCREN COMPANY	Y
	SCHERING-PLOUGH HEALTHCARE	N
	SCHERING-PLOUGH HEALTHCARE	N
	SCHERING-PLOUGH HEALTHCARE	N
	CARINA INTERNATIONAL, INC.	N
	UNITED STATES SHOE CORPORATION	Y
	JAPAN CBM CORPORATION	N
	FORTUNE PHARMACAL CO., LTD.	N
	PLAYTEX MARKETING CORPORATION	N
	PLAYTEX MARKETING CORPORATION	N
	THOSE CHARACTERS FROM CLEVELAND	N
	MAR-LEN SUPPLY INC.	N
	BOLLE AMERICA, INC.	Y
	L. C. LICENSING, INC.	N
	L. C. LICENSING, INC.	N
	L. C. LICENSING, INC.	N
TH CONCENTRIC	L. C. LICENSING, INC.	N
	GIORGIO BEVERLY HILLS, INC.	N
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	NISHIMOTO TRADING CO., LTD.	N
	ELIZABETH TAYLOR COSMETICS CO.	N
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91 00370	19910713	20050519	COTLER
91 00371	19910713	20001111	FASHION PLATES
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91 00384	19910716	20090919	FOTA
91 00385	19910716	20010507	DESIGN OF OBSESSION FO
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91 00388	19910716	20071013	BLACKTRON LOGO
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91 00396	19910717	20080621	HARD ROCK CAFE & DESIG
91 00397	19910722	20040710	ATUNE
91 00398	19910722	19940710	GM
91 00399	19910722	19940710	GM
91 00400	19910723	20050709	AXIS AND DESIGN
91 00401	19910723	20050709	AXIS AND BUTTON
91 00403	19910725	20051022	SKITTLES
91 00404	19910725	19941217	STARBURST
91 00405	19910725	20041104	SWICKERS
91 00406	19910725	20061104	MILKY HAY
91 00407	19910725	20061104	3 MUSKETEERS
91 00408	19910725	20081004	MILKY HAY
91 00409	19910725	20081115	SWICKERS
91 00410	19910725	20090404	MILKY HAY
91 00411	19910725	20090404	THIX

USTOMS SERVICE
S ADDED IN JULY 1991

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DETAIL 10

OR MSK	OWNER NAME	RESTRCTD
	L. C. LICENSING, INC.	N
	L. C. LICENSING, INC.	N
	L. C. LICENSING, INC.	N
	L. C. LICENSING, INC.	N
	L. C. LICENSING, INC.	N
	LIZ CLAIBORNE, INC.	N
	BERNARDI OF CALIFORNIA	Y
	H. COLTER COMPANY, INC.	N
	KABUSHIKI KAISHA TOMY INC.	N
ND DESIGN	MEHDI DILMAGHANI & CO.,	Y
	MEHDI DILMAGHANI & CO.,	Y
	KALIMAR INC.	N
	KALIMAR INC.	N
	STOKELY-VAN CAMP, INC.	Y
	STOKELY-VAN CAMP, INC.	Y
HER STYLIZED	STOKELY-VAN CAMP, INC.	Y
	CAMPBELL SOUP COMPANY	Y
SSION	CAMPBELL SOUP COMPANY	Y
	ELIZABETH TAYLOR COSMETICS	N
	ALMAR SALES CO., INC.	N
	CDC PRODUCTS CORPORATION	N
	LIBERTY SUPPLIES CO.,	Y
OR MEN BOTTLE	CALVIN KLEIN COSMETIC CORP.	Y
	INTERLEGO A.G.	N
	INTERLEGO A.G.	N
	INTERLEGO A.G.	N
	INTERLEGO A.G.	N
	INTERLEGO A.G.	N
	MEADOX MEDICALS, INC.	N
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	MEADOX MEDICALS, INC.	N
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	RICHARDSON SOLOMON	Y
	RICHARDSON SOLOMON	Y
	MARS INCORPORATED	N
	MARS INCORPORATED	N
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	MARS INCORPORATED	N
	MARS INCORPORATED	N

CUSTOMS BULLETIN AND DECISIONS, VOL. 25, No. 37, SEPTEMBER 11, 1991

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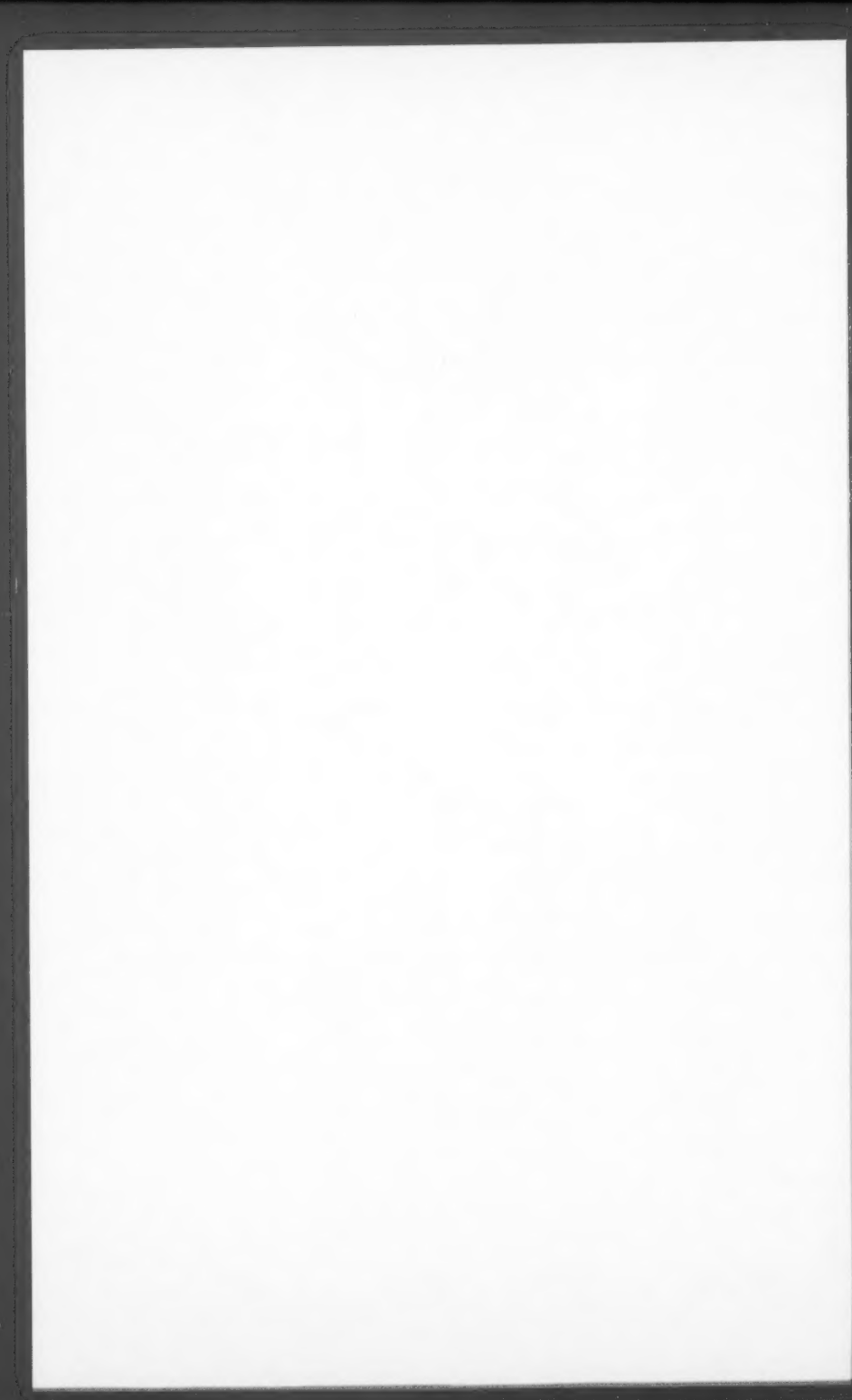
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91 00419	19910729	20010115	PEDIGREE
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91 00429	19910729	19970719	UNCLE BEN'S
91 00430	19910729	20010312	FKC & DESIGN
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THM 91 00003	19910713	99999999	OHAUS CORPORATION
91 00004	19910713	99999999	KNOTT'S BERRY FARM
SUBTOTAL RECORDATION TYPE		2	
TOTAL RECORDATIONS ADDED THIS MONTH			162

CUSTOMS SERVICE
IONS ADDED IN JULY 1991

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DETAIL

----- TMM OR MSK	OWNER NAME	----- RESTRCTD
	MARS INCORPORATED	N
	MARS INCORPORATED	N
	MARS INCORPORATED	N
	MARS INCORPORATED	N
	MARS INCORPORATED	N
	MARS INCORPORATED	N
	KAL KAN FOODS, INC.	N
	KAL KAN FOODS, INC.	N
	KAL KAN FOODS, INC.	N
	KAL KAN FOODS, INC.	N
	KAL KAN FOODS, INC.	N
	KAL KAN FOODS, INC.	N
	KAL KAN FOODS, INC.	N
	KAL KAN FOODS, INC.	N
	UNCLE BEN'S INC.	N
	UNCLE BEN'S INC.	N
	UNCLE BEN'S INC.	N
	UNCLE BEN'S INC.	N
	UNCLE BEN'S INC.	N
	FUKOKU KOGYO CO., LTD.	N
	OHAUS CORPORATION	N
	KNOTT'S BERRY FARM CORP.	N

U.S. CUSTOMS SERVICE



United States Court of International Trade

One Federal Plaza
New York, N.Y. 10007

Chief Judge
Edward D. Re

Judges

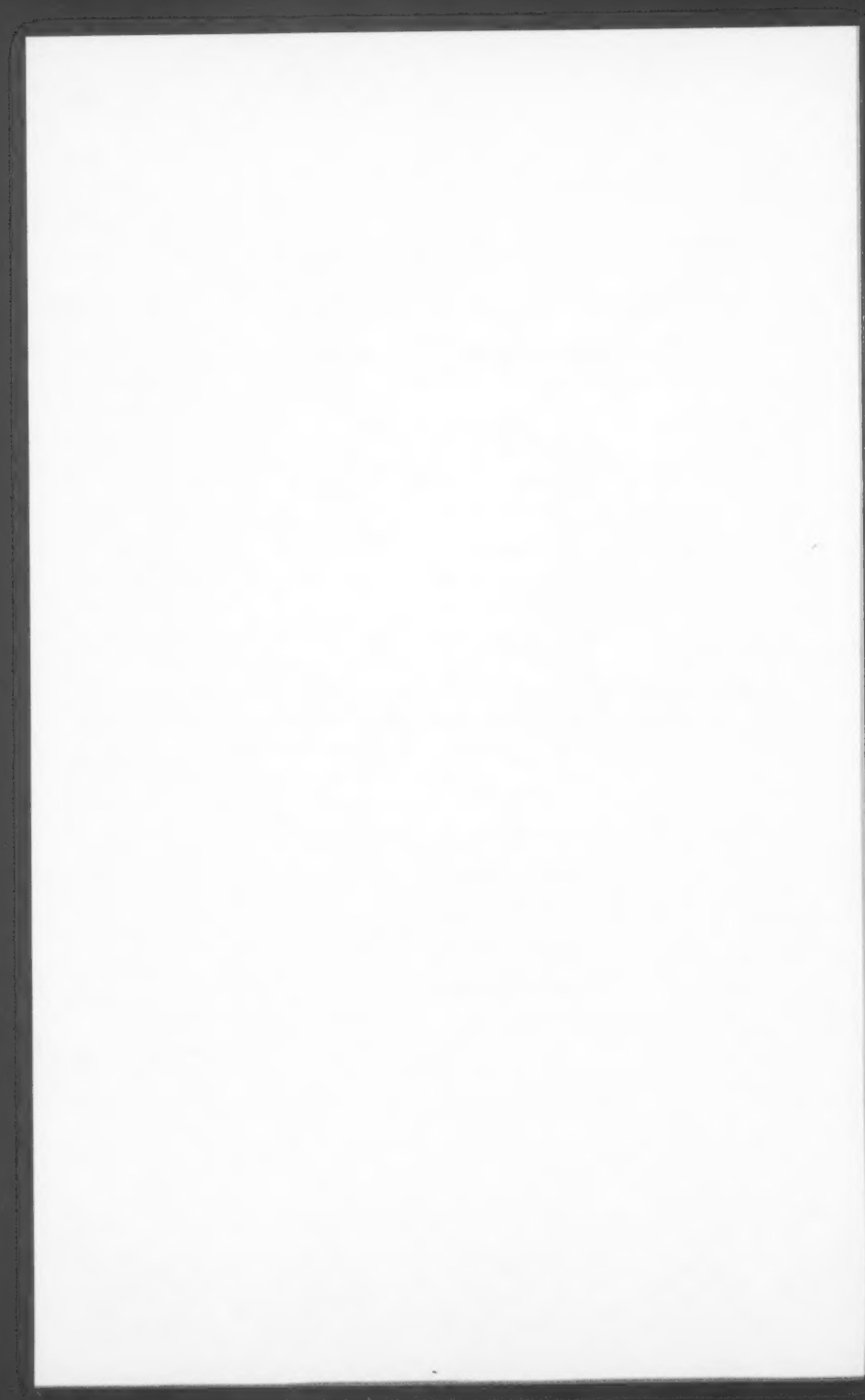
Gregory W. Carman
Jane A. Restani
Dominick L. DiCarlo

Thomas J. Aquilino, Jr.
Nicholas Tsoucalas
R. Kenton Musgrave

Senior Judges

Morgan Ford
James L. Watson
Herbert N. Maletz
Bernard Newman
Samuel M. Rosenstein
Nils A. Boe

Clerk
Joseph E. Lombardi



Decisions of the United States Court of International Trade

(Slip Op. 91-71)

ARTHUR J. HUMPHREYS, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 82-09-01254

[Motion for reconsideration granted. After reconsideration, the Court adheres to its prior ruling. Judgment for plaintiff.]

(Decided August 16, 1991)

Law Offices of George T. Tuttle (Stephen S. Spraitzar) for plaintiff.

Stuart M. Gerson, Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice (*Saul Davis*) for defendant.

DiCARLO, Judge: Pursuant to Rule 59 of the Rules of this Court, defendant moves for rehearing of this Court's decision in *Arthur J. Humphreys, Inc. v. United States*, 15 CIT ___, 764 F. Supp. 188 (1991). The Court grants defendant's motion for rehearing and finds the merchandise is not classifiable as hardboard, whether or not face finished, other. Accordingly, judgment is entered in favor of plaintiff.

BACKGROUND

The background to this case is set forth in the Court's prior opinion. The Court found plaintiff had overcome the presumption of correctness in Customs' classification and the merchandise is not classifiable as hardboard, which is an input material commercially susceptible to a variety of uses. *Humphreys*, 15 CIT at ___, 764 F. Supp. at 192. *See also* 28 U.S.C. § 2639(a)(1) (1988) (presumption of correctness); *W.Y. Moberly, Inc. v. United States*, 924 F.2d 232, 237 (Fed. Cir. 1991) (presumption of correctness).

DISCUSSION

Under Rule 59(a)(2) of the Rules of this Court, "[a]. * * * rehearing may be granted * * * for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States." A motion for rehearing is addressed to the sound discretion of the trial court. *Sharp Elecs. Corp. v. United States*, 14 CIT ___, 729 F. Supp. 1354, 1355 (1990); *RSI (India) Pvt., Ltd. v. United States*, 12 CIT 594, 595, 688 F. Supp. 646, 647 (1988), *aff'd*, 7 Fed. Cir. (T) 100, 876 F.2d 1571 (Fed. Cir. 1989). Rehearing is appropriate where there is a fundamental or significant flaw in the original proceeding. *Brookside Veneers Ltd. v. United States*, 11 CIT 197, 197, 661 F. Supp. 620, 621 (1987),

rev'd on other grounds, 6 Fed. Cir. (T) 121, 847 F.2d 786, cert. denied, 488 U.S. 943 (1988).

The purpose of a rehearing is not to relitigate. *Belfont Sales Corp. v. United States*, 12 CIT 916, 917, 698 F. Supp. 916, 918 (1988), *aff'd*, 878 F.2d 1413 (Fed. Cir. 1989). Nevertheless, the Court is mindful of its obligation to see that merchandise is correctly classified. See *Jarvis Clark Co. v. United States*, 2 Fed. Cir. (T) 70, 75, 733 F.2d 873, 878, *reh'g denied*, 2 Fed. Cir. (T) 97, 739 F.2d 628 (1984). Defendant has raised several new arguments and has more clearly articulated its previous arguments. The Court in its discretion will reconsider its decision.

I. Dedication to a Particular Use:

Defendant first argues the Court's application of *United States v. Quality Marble and Granite Co.*, 48 CCPA 50, C.A.D. 763 (1960) is incorrect as a matter of law. According to defendant, the *eo nomine* provision for other hardboards, whether or not face finished, includes merchandise which, absent that provision, would fall into the residual provision for building boards not specially provided for. Defendant's Memorandum in Support of Defendant's Motion for Rehearing, 7. Consequently, even if 100% of the merchandise were used as wall or ceiling covering, the *eo nomine* provision for hardboard prevails.

This argument is contrary to the decision in *American Hardboard Ass'n v. United States*, 12 CIT 714, 717 (1988), which held that hardboard is an input material commercially susceptible to a variety of uses. That holding is consistent with the *Tariff Classification Study* ("TCS") statement that "[h]ardboard is used chiefly in construction, in cabinet and millwork, in furniture and fixtures, and other fabricated and industrial products * * *." 4 TCS at 67. As was the case in *American Hardboard*, if 100% of the material were employed as wall covering, it would not be susceptible to a variety of uses such as those listed in the TCS and would, therefore, not be classifiable as a form of hardboard.

Defendant next argues that unlike the situation in *Quality Marble*, the TSUS provisions at issue disclose a congressional intention that building boards made of hardboard be excluded from classification as building board. As evidence for this proposition, defendant cites the TCS which states: "all fiber building boards (*except hardboard and gypsum board*) are provided in item 245.90 * * * [as building boards not specially provided for]." 4 TCS at 69 (emphasis added). From this, defendant asserts that hardboard building boards or gypsum building boards are specifically excluded from classification as building boards. Defendant's Memorandum at 8.

Defendant's argument ignores the effect of the Court's factual determination that the merchandise has been processed to the extent that it is no longer hardboard. While the merchandise is fiber building board, it cannot properly be said that the TCS specifically excludes it from classification under item 245.90, TSUS. Hardboard has a variety of uses; this merchandise does not. Consequently, it is classifiable with all other fiber building boards under item 245.90, TSUS.

Finally, defendant argues because the 10% alternative use of plaintiff's merchandise is not fugitive, this action is distinguishable from *Quality Marble* and *A.P. Baldechi & Son v. United States*, 56 CCPA 112, C.A.D. 963, 420 F.2d 756 (1969). Defendant's Memorandum at 11. *Quality Marble* does not state that other uses of the imported merchandise were fugitive. *Baldechi* was based on an application of *Quality Marble* and did not turn on whether alternative uses of the merchandise were fugitive. Accordingly, defendant's argument is unpersuasive.

II. Absurd or Anomalous Results of the Court's Prior Ruling:

Defendant maintains the Court's original determination will lead to absurd and anomalous results. Defendant's Memorandum at 12. Defendant's first example of an absurd result is the fact that under the Court's ruling, the merchandise is building board because it is used 90% or more of the time as wall covering. Despite this, face finished plywood, particle board and gypsum board, all of which are used 95% or more of the time as wall covering are not building board.

The Court has stated its opinion that plywood and gypsum board are more specifically defined in the TSUS and that hardboard is a limited classification. Plywood and gypsum board are not similarly limited and, therefore, are in no danger of filling into the basket provision for building board. See *Humphreys*, 15 CIT at ___, 764 F. Supp. at 193.

Defendant next argues that the Court's reliance on the use of the merchandise is absurd because as use changes over time, classification of the merchandise may have to change. Building board is defined as being chiefly used in construction. Headnote 1(e), TSUS, Schedule 2, Part 3. Hardboard is an input material susceptible to multiple uses. Use, therefore, is relevant to the classification of the merchandise. The Court assumes Customs has substantial expertise in dealing with use provisions and that no new administrative burden will fall to Customs as a result of this holding. Defendant's argument is, therefore, unpersuasive.

Defendant also cites numerous facts to support its assertion that the merchandise is not precluded from the uses to which hardboard and face finished hardboard are put. The Court acknowledges the merchandise is not precluded from these uses and that the merchandise moves in the same channels of commerce at similar prices as hardboard. Nevertheless, the Court is left with the fact that the merchandise does not have a variety of uses and the limitation on the TSUS item for hardboard. Given this limitation and the holding in *Quality Marble*, it is not absurd to classify this extensively processed merchandise as something other than hardboard.

Defendant next argues the definition of "face finished" in Headnote 2 to Schedule 2, Part 3, TSUS requires the Court reverse its prior ruling. Headnote 2 states face finished means "that one or both surfaces or a panel or board have been treated with creosote or other wood preservatives, or with fillers, sealers, waxes, oils, stains, varnishes, paints, or enamels, or have been overlaid with paper, fabric, plastics, base metal or other material." From this, defendant argues a hardboard panel over-

laid with base metal that has been edgeworked, machined, embossed and printed with a design would remain classifiable as face finished hardboard. Defendant's Memorandum at 16.

In *American Hardboard*, the court held the language "whether or not face finished" does not prevent merchandise which has undergone other sorts of processing from classification under the *eo nomine* provision for hardboard. *American Hardboard*, 12 CIT at 716. Nevertheless, neither the headnote nor *American Hardboard* provide that hardboard which has undergone all of the processes mentioned in defendant's argument remains classifiable as a form of hardboard. Moreover, while the Court does not decide the question, the use of the disjunctive "or" in the headnote appears to indicate that if hardboard were preserved with creosote and overlaid with base metal or otherwise processed, it would be more than face finished. It appears, therefore, the merchandise is something other than face finished hardboard.

III. *American Hardboard and the Common and Commercial Meaning of Hardboard:*

Defendant's last argument is that the Court's ruling is inconsistent with the decision in *American Hardboard* as well as the common and commercial meaning of hardboard. On this point, defendant first maintains the Court erred by comparing the merchandise to "standard hardboard" classifiable under items 245.00 through 245.20, TSUS, rather than to face finished hardboard classifiable under TSUS item 245.30. Defendant's Memorandum at 20.

The question before the Court is whether the merchandise falls within the common and commercial meaning of face finished hardboard. Following *American Hardboard*, the Court's analysis centered on whether the merchandise is an input material commercially susceptible to multiple uses. Having found guidance in answering this question in a decision of the Court of Appeals, the Court applied the analysis found in *Quality Marble*. To the extent the Court referred to standard hardboard, see *Humphreys*, 15 CIT at ___, 764 F. Supp. at 192, that reference was for illustrative purposes and did not affect the outcome of the case. The Court finds, therefore, any error it committed in referring to standard hardboard to have been immaterial.

Defendant next contends the Court erred in failing to accept the definition of hardboard from an industrial commercial standard ("CS 251-63"). Defendant's Memorandum at 20. The Court rejected defendant's arguments based on CS 251-63 because the industry adopted the standard the year after Congress promulgated the TSUS. CS 251-63 is, therefore, not evidence of Congressional intent. *Humphreys*, 15 CIT at ___, 764 F. Supp. at 193. Defendant offers numerous cases where the Court allegedly relied on subsequent definitions as evidence of Congressional intent. See, e.g., *Daw Indus., Inc. v. United States*, 1 Fed. Cir. (T) 146, 147 n.4, 714 F.2d 1140, 1141 n.4 (1983); *Nippon Kogaku, Inc. v. United States*, 69 CCPA 89, 93 n.2, 673 F.2d 380, 382 n.a (1982); *Toyota*

Motor Sales, Inc. v. United States, 7 CIT 178, 182, 585 F. Supp. 649, 653, *aff'd*, 3 Fed. Cir. (T) 93, 753 F.2d 1061 (1985).

The cases defendant cites do not require this Court to give significant weight to a subsequent definition. In *Daw Indus.*, the question was the meaning of the term "prosthesis." The trial court relied on several dictionary definitions but did not state the year of publication for the references. See *Daw Indus.*, 5 CIT at 20-21, 561 F. Supp. at 439 (1983). In the next paragraph, the Court looked at the Summaries of Trade and Tariff Information which, because they were published after the enactment of TSUS, the Court stated are not evidence of Congressional intent but may be evidence of administrative practice. *Id.* at 21, 561 F. Supp. at 439.

On appeal, the Federal Circuit agreed with the trial court and did not address the meaning of prosthesis. See *Daw Indus.*, 1 Fed. Cir. (T) at 147, 714 F.2d at 1141. In a footnote, the Federal Circuit cited two medical dictionaries; one published in 1970 and the other in 1981 together with a 1965 and a pre-TSUS 1951 edition of the latter reference. *Id.* at 147 n.4, 714 F.2d at 1141 n.4.

In *Nippon Kogaku*, the Court of Appeals cited, in a footnote, a post-TSUS dictionary definition of a term as support for a proposition that was not in question. *Nippon Kogaku*, 69 CCPA at 93 n.2, 673 F.2d at 382 n.2 (1982). Despite this reference, the court's analysis focused almost exclusively on the TCS which was prepared prior to the TSUS in contemplation of the revised rate tariff schedules.

In *Toyota*, this court stated "the meaning to be given a descriptive term used in a tariff act is that which it had at the time of the law's enactment. A subsequent definition may not be used to expand the meaning of a term, but is an aid to clarifying it." *Toyota*, 7 CIT at 182, 585 F. Supp. at 653 (citations omitted). The subsequently established commercial standard, therefore, does not reflect the meaning of hardboard at the time of the enactment of the TSUS. The Court's analysis of the TCS and its prior decision in *American Hardboard* convinced the Court the term hardboard was sufficiently clear to obviate the need for further analysis based on subsequent definitions. Furthermore, defendant's reliance on CS 251-63 is an attempt to broaden the meaning of hardboard beyond merchandise having multiple uses to encompass articles having more limited applications. The Court, therefore, did not err in failing to give the proper weight to CS 251-63.

Defendant's remaining arguments go to the processing to which the merchandise was subjected during manufacturing. Defendant's Memorandum at 25-27. Defendant argues none of the individual processes is sufficient to advance the merchandise beyond hardboard. The Court, however, considered the merchandise in its final condition. Based on its consideration of the merchandise as a whole, as well as the use and marketing as the merchandise, the Court found it to have been advanced beyond the input material hardboard, whether or not face finished.

CONCLUSION

Defendant's arguments have not convinced the Court that it was in error or that there was a fundamental or significant flaw in the original proceeding. To the extent defendant raised additional arguments in this motion, the Court has considered them and finds them to be reiterations of arguments previously considered or otherwise not persuasive. Accordingly, the Court adheres to the reasoning and decision enunciated in its prior opinion. As defendant has abandoned its alternative classification, *see Humphreys*, 15 CIT at ___, 764 F. Supp. at 193, judgment is rendered in favor of plaintiff.

(Slip Op. 91-72)

FUJITSU GENERAL, LTD., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 91-03-00187

[Plaintiff's motion to strike portion's of defendant's answer is denied.]

(Dated August 19, 1991)

Siegel, Mandell and Davidson (Brian S. Goldstein and David Newman) for plaintiff.
Stuart M. Gerson, Assistant Attorney General, *David M. Cohen*, Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, (*Vanessa P. Sciarra*), (*D. Michael Kaye*, Attorney-Advisor, U.S. Department of Commerce, Of Counsel) for defendant.

MEMORANDUM OPINION AND ORDER

MUSGRAVE, *Judge*: This case comes before the Court on plaintiff's motion to strike portions of defendant's answer as non-responsive under Rules 8(c), 8(f) and 12(f) of the Rules of this Court. Plaintiff alleges that defendant failed to adequately respond to the allegations in its complaint by admitting the allegations "to the extent established by the administrative record, which is the best evidence of its contents." Plaintiff requests that this Court strike defendant's answer to the extent that it admits plaintiff's allegations "to the extent established by the administrative record," and order that defendant file an amended answer.

Defendant argues that under *Beker Industries Corp. v. United States*, 7 CIT 199, 201, 585 F. Supp. 663, 666 (1984), its answer provides sufficiently direct responses to plaintiff's allegations. That case provides in part:

Although some of defendants' answers could have been more accurate, this has caused plaintiff no prejudice. We also find that plaintiff has not sufficiently demonstrated a lack of good faith. *See* Rule 11. If the less drastic remedy of requiring amended pleadings would

result in clarification of benefit to all parties and the Court, the Court would consider this remedy, but in this case this would not benefit anyone, including plaintiff; it would merely delay the case.

Beker Industries Corp. v. United States, 7 CIT at 203, 585 F. Supp. at 668.

Under Rule 12(f), the granting of a motion to strike constitutes an extraordinary remedy, and should be granted only in cases where there has been a flagrant disregard of the Rules of this Court. *Jimlar Corp. v. United States*, 10 CIT 671, 673, 647 F. Supp. 932, 934 (1986). The Court does not find that the government's answer is in flagrant disregard of the Rules of this Court.

For the above reasons and because this Court is hesitant to grant the extraordinary relief requested, plaintiff's motion is denied.

NOTE: Pursuant to the court's Procedures for Publication of Opinions and Orders, the court's unpublished order entered on August 19, 1991 is being published by the Clerk's office as Slip Op. 91-73.

(Slip Op. 91-73)

U.H.F.C. Co., PLAINTIFF *v.* UNITED STATES, DEFENDANT

Court No. 83-11-01598

(Dated August 19, 1991)

JUDGMENT

MUSGRAVE, *Judge*: Upon consideration of the *Final Results of Redetermination Pursuant to Court Remand*, issued by the United States Department of Commerce and Dated January 31, 1991 (hereinafter, "Remand Results"), plaintiff's statement of intent not to contest same, and upon due deliberation, it is hereby —

ORDERED, ADJUDGED AND DECREED, that the *Final Results of Redetermination Pursuant to Court Remand* are affirmed, and that this case is hereby dismissed.

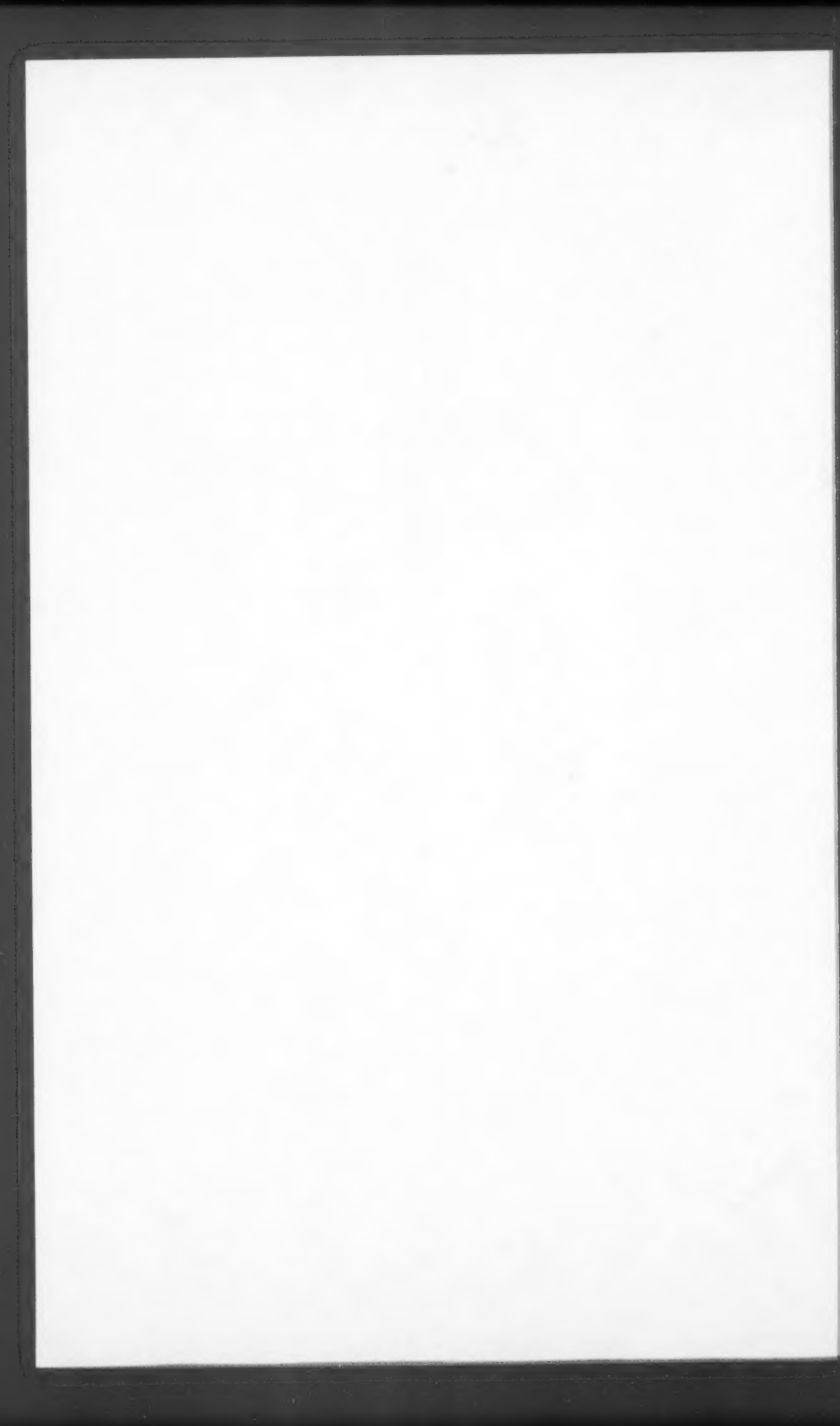
ABSTRACTED CLASSIFICATION

DECISION NO./DATE JUDGE	PLAINTIFF	COURT NO.	ASSESSED
C91/235 8/15/91 Aquilino, J.	Leisure Craft	86-9-01131	716.09-716.45, 715.15, etc., Various rates

ICATION DECISIONS

	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
S, s	688.40, 688.45, 688.43, 688.42, etc. Various rates	Belfont Sales Corp. v. U.S., 878 F.2d 1413 (1989) or Texas Instruments Inc. v. U.S., 673 F.2d 1375 (1982)	New York Quartz analog watches, etc.





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